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# BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL EXPRESS, PRIORITY MAIL
& PARCEL SELECT CONTRACT 1 (MC2023–50)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2023-48

# USPS RESPONSE TO CHAIRMAN'S INFORMATION REQUEST NO. 1 (December 2, 2022)

The United States Postal Service hereby provides its response to Chairman's Information Request No. 1, which was issued on December 1, 2022. A response was due by December 5, 2022.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Sean C. Robinson

475 L'Enfant Plaza, SW Washington, D.C. 20260-1137 (202) 268-8405 Sean.C.Robinson@usps.gov December 2, 2022

# **REQUEST:**

Please submit a revised version of the contract without redactions in Section I.K.
 Alternatively, please explain why the information in Section I.K. is of a type for which non-public treatment was requested.

Response: Attached. Section I.K. was redacted in the initial filing as a result of inadvertent error.

# **REVISED REDACTED SHIPPING SERVICES CONTRACT**

# SHIPPING SERVICES CONTRACT BETWEEN THE UNITED STATES POSTAL SERVICE

AND

REGARDING
PRIORITY MAIL EXPRESS,
PRIORITY MAIL,
AND
PARCEL SELECT

This Shipping Services Contract (as it may be amended, restated, supplemented or otherwise modified from time to time, and together with all attachments hereto, "SSC" or "Contract") is made by and between a corporation organized and existing under the laws of with its principal office at ("Customer"), and the United States Postal Service ("the Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party".

WHEREAS, it is the intention of the Parties to enter into a Contract that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

NOW, THEREFORE, the Parties agree as follows:

#### I. Terms

The following terms apply as of the Effective Date defined in Section II:

#### A. Postal Laws and Standards

Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300\_landing.htm) and of other postal laws and standards, including USPS Publication 52 – *Hazardous*, *Restricted, and Perishable Mail*, apply to mail tendered under this Contract.

#### B. Applicable Products

This Contract applies to Contract Packages, defined in Section <u>I.C.</u>, shipped using the following products with the following limitations:

	1.	Priority Mail Express weight-based packages that do not exceed	
	2. 3.	Priority Mail Express Flat Rate Envelopes Priority Mail weight-based packages that do not exceed ;	
	4.	Priority Mail cubic packages that do not exceed	
	<ul><li>5.</li><li>6.</li></ul>	Priority Mail Flat Rate Envelopes Priority Mail Flat Rate Boxes	
	7.	Priority Mail Regional Rate Boxes	
	8.	Parcel Select Ground weight-based packages, excluding	
	9.	Parcel Select Ground cubic packages that do not exceed	
	10.	First-Class Package Service – Commercial weight-based packages, excluding	
	11.	First-Class Package Service cubic packages that do not exceed	
C.	Contract Packages		
	Contract Packages are defined herein as inbound and outbound packages of Applicable Products listed in section <u>I.B.</u> , excluding packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from an addressed to ZIP codes contained in Table A below, shipped by the packages originating from an addressed to ZIP codes contained in Table A below, shipped by the packages originating from an addressed to ZIP codes contained in Table A below, shipped by the packages originating from an addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the packages originating from and addressed to ZIP codes contained in Table A below, shipped by the zip codes contained in Table A below, shipped by the zip codes contained in Table A below, shipped by the zip codes contained in Table A below, shipped by the zip codes contained in Table A bel		

<sup>&</sup>lt;sup>1,2</sup> Beginning on the effective date of Docket No. MC2022-82 addressing the removal of Parcel Select Ground from the Mail Classification Schedule, Contract Packages will no longer include Parcel Select Ground weight-based or cubic packages.

Package Service up to Contract Packages will include First-Class Package Service packages weighing as well as cubic packages that do not exceed

contract with the Postal Service are also not eligible for any discounts under this Contract. Customer's may host with an existing contract, subject to the prices and terms of such contract, after providing the		

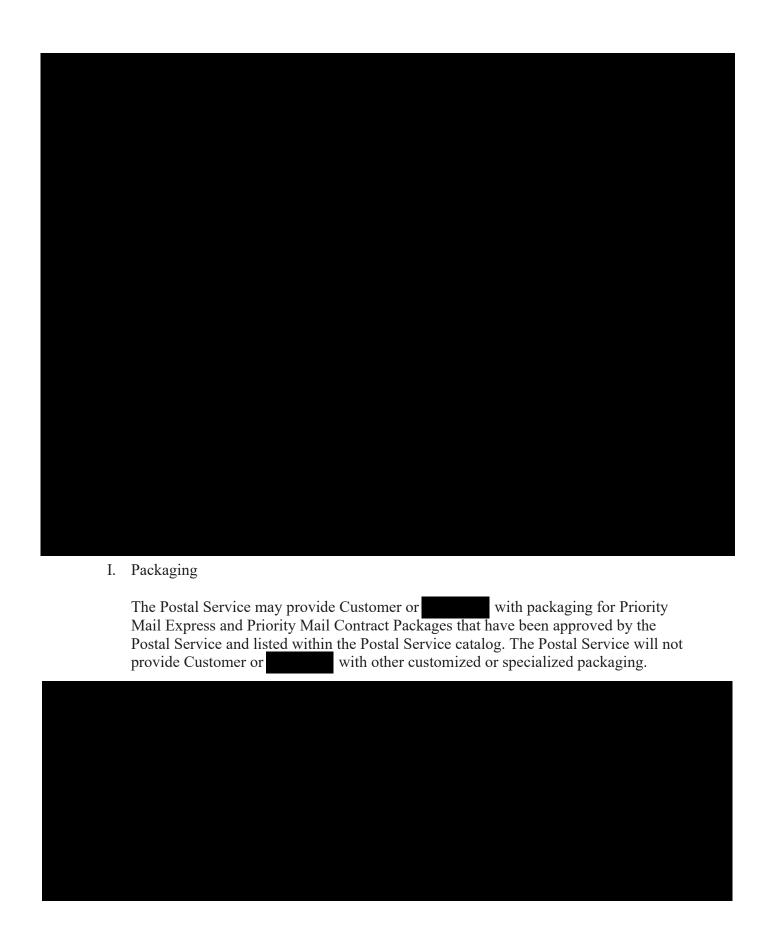
#### F. Reselling

Customer shall ensure that all using Customer's expressly commit to not offer, sell, or allow the use of Contract pricing provided in this Contract to any other entity or party (i.e. "reselling"), including commercial published pricing for the Applicable Products listed in Section I.B, or any prices below commercial published pricing. For the avoidance of doubt, any instance of reselling by Customer or using Customer's in violation of this Section will constitute a material breach of this Contract and will be subject to the termination provisions in Section III.

#### G. Payment Methods

Customer will manifest Contract Packages as specified by the Postal Service, using approved payment methods, such as permit numbers, mailer ids, and/or PC Postage meter numbers to ship such packages, and will use a USPS approved manifest system or USPS approved PC Postage vendor system for payment of such packages. Only payment methods registered to the Customer, with the Customer's name, address, email, and phone number will be approved by the Postal Service. These approved payment methods must be used exclusively for Customer's Contract Packages. Contract pricing for any newly approved payment methods will be effective within fifteen (15) business days after the Parties mutually agree to add such payment method(s).





# K. Price Adjustments

Throughout the term of this Contract, and any extension period following the Contract term, Customer will pay the most recently effective Commercial Published Pricing, less the respective discounts referenced in section I.J above for Contract Packages rounded up to the nearest whole cent.

# L. Surcharges, Additional Fees, and Time-Limited Price Changes

To the extent the Postal Service promulgates a surcharge, additional fee, or time-limited price change, pertinent to Applicable Products in section <u>I.B</u> during the term of this Contract, such surcharge, fee, or time-limited price change will be applied to the then applicable prices for those products under this Contract, subject to the same terms as such surcharge or fee is applied to the prices of general applicability for those products, respectively, as calculated by the Postal Service. The Postal Service reserves the right to forego an increase pursuant to this section or increase by a lesser amount (but no less than zero), at its sole discretion.

# M. Quarterly Business Reviews (QBRs)

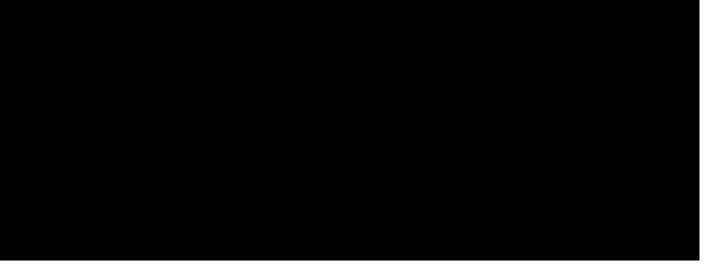
The Parties shall, within thirty (30) calendar days after the conclusion of each full Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages and other performance expectations, including growth over same period last year, Postal Service market share of the Customer's shipping business, positioning compliance under this Contract. The Parties shall also review Customer's efforts to ensure end shipper compliance with Postal policies, regulations and procedures for shipping HAZMAT items as well as other packages shipped under this Contract. This business review shall be conducted either in person, by telecom,

<sup>&</sup>lt;sup>5</sup> Contract Package category for Parcel Select Ground weight rated packages weighing up to and including will no longer be applicable on the effective date of MC2022-82.

<sup>&</sup>lt;sup>6</sup> Contract Package category for First-Class Package Service weight rated packages weighing up to and including will not be effective until the effective date of MC2022-82.

Contract Package category for First-Class Package Service cubic rated packages will not be effective until the effective date of MC2022-82.

or by webinar. If either Party is unable to conduct a business review within thirty (30) calendar days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e., email or mail) of that fact and propose a date as soon as practicable thereafter.

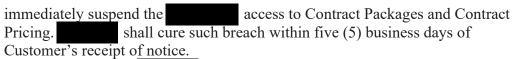


# O. Record Keeping and Audit

Customer shall respond to the Postal Service's or its designated auditor's quarterly and/or yearly transaction confirmations related to Postal Service transactions; and such other assistance as required by the Postal Service or its designated auditors in connection with Customer's performance under this Contract.

# P. Miscellaneous Requirements.

- 1. Customer shall not provide to pricing below prevailing published Commercial prices for Priority Mail Express, Priority Mail and Parcel Select Contract packages. If Customer is found noncompliant, a violation of this section will constitute a material breach of this Contract and will be subject to the termination provisions in Section III.
- 2. The Postal Service may request complete and accurate transaction level data for any transaction, including payment and information at any time. Customer must comply with the request within five (5) business days, providing sufficient data for the Postal Service to accurately compare postage amounts paid to the Postal Service by Customer with postage amounts paid to Customer by each . The data shall be in a format specified by the Postal Service.
- 3. Customer shall ensure that each agrees to comply with all applicable requirements that the Customer is subject to under the Contract, and if found noncompliant, access to Contract Package Discounts may be terminated or suspended in accordance with the Contract terms.
- 4. In the event that the Customer receives a written notice from the Postal Service indicating that any has breached any Contract term, the Customer shall



- 5. In the event that any short-pays postage, Customer takes full financial responsibility to pay the Postal Service the short-paid amount.
- 6. Customer shall provide the below-listed privacy notice to all when the Customer is collecting information on behalf of the Postal Service to administer financial transactions for purchasing postage and to meet postage system reporting requirements.

Privacy Act Statement: Your information will be used to facilitate the purchase of USPS postage and fulfill transactional reporting requirements for USPS postage systems. Collection is authorized by 39 U.S.C. 401, 403, and 404. Providing the information is voluntary, but if not provided, your transaction may not be processed. The Postal Service does not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a US Postal Service (USPS) auditor; to entities, including law enforcement, as required by law or in legal proceedings; and to contractors and other entities aiding us to fulfill the service (service providers). For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

7. Customer, Customer's and its may not use United States Postal Service logos, trademarks or other intellectual property without the permission of USPS Rights & Permissions.

#### II. Regulatory Review and Effective Date

This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service as well as by the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission. The effective date of this Contract shall be three (3) business days following the day on which the Commission issues all necessary regulatory approval. For the purposes of this SSC, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.

#### **III.** Expiration Date and Termination

#### A. Expiration

1. Unless the Effective Date of this Contract occurs between December 1<sup>st</sup> and March 31<sup>st</sup>, this Contract shall expire one (1) year from the Effective Date, unless

- (a) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing pursuant to Section <u>III.B.1</u>; (b) terminated by either Party pursuant to Section <u>III.B.2</u>; (c) renewed by mutual agreement in writing and subsequent approval by the Commission; (d) superseded by a subsequent contract between the Parties; (e) ordered by the Commission or a court; or (f) required to comply with subsequently enacted legislation.
- 2. If the Effective Date of this Contract occurs between December 1<sup>st</sup> and March 31<sup>st</sup>, the Contract will expire on March 31<sup>st</sup> following the first anniversary of the Contract's Effective Date, unless (a) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing pursuant to Section III.B.1; (b) terminated by either Party pursuant to Section III.B.2; (c) renewed by mutual agreement in writing and subsequent approval by the Commission; (d) superseded by a subsequent contract between the Parties; (e) ordered by the Commission or a court; or (f) required to comply with subsequently enacted legislation.

#### B. Termination

- 1. Termination for Convenience. Each Party reserves the right to terminate this Contract for convenience, without penalty, with thirty (30) calendar days' written notice to the other Party.
- 2. Termination for Breach. If either Party breaches any material term of this Contract and fails to cure such breach within five (5) business days after receiving written notice from the non-breaching Party describing such breach, the non-breaching Party may immediately terminate this Contract in its entirety. In addition, if the Postal Service determines that Customer has breached any material term of this Contract, the Postal Service shall have the right to immediately suspend the Customer's access to Contract Package Discounts or terminate or suspend Customer's authority to offer access to Contract Packages to one or more while Customer cures such breach. At the sole discretion of the Postal Service, Customer shall pay the difference between prevailing published prices and Contract prices on all Contract Packages shipped during the time period of such breach, but not to exceed one year. Notwithstanding anything to the contrary set forth in the Contract, either Party may pursue to the full extent available any and all remedies that may be available at law, equity or under the Contract.

#### C. Extension

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor contract is active, this Contract may be extended for up to two (2) ninety (90) calendar day periods, with official notice filed with the Commission at least seven (7) calendar days prior to the Contract's expiration date.

# IV. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal via email, along with any and all supporting documentation, within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to:

The appeal is forwarded to the Pricing and Classification Service Center (PCSC). The PCSC manager issues the final agency decision. Any decision that is not appealed as prescribed becomes the final agency decision.

# V. Confidentiality

Customer acknowledges that as part of securing approval of this Contract, the Contract and supporting documentation will be filed with the Commission in a docketed proceeding. The Postal Service shall request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this Contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing. Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this Contract or supporting information will be available on the Commission's public website, www.prc.gov. At the request of Customer, the Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not disclose to third parties absent express written consent by the Postal Service any information related to this Contract that is determined by the Commission to be non-public.

#### VI. Amendments

This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

#### VII. Assignment

Neither Party may, or shall have the power to, assign its rights under the Contract or, delegate its obligations hereunder, without the prior consent of the other; such consent is not to be unreasonably withheld. In addition, in the event that Customer is merged with or into or acquires another entity, pricing under this Contract following such merger or acquisition shall apply only to mail sent by the entity existing prior to the merger or acquisition. Following any such merger or acquisition, the parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

#### VIII. Waiver

Any waiver by a Party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in writing executed by the Party waiving such provision.

# IX. Representations, Warranties and Covenants

Customer hereby represents, warrants and covenants to the Postal Service as follows:

- A. The execution and delivery by Customer of the Contract and the performance by the Customer of its obligations under the Contract (1) are within the Customer's power and authority; (2) have been duly authorized; and (3) do not and will not contravene (a) any law or regulation binding on or affecting Customer, (b) any contractual restriction binding on Customer, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Customer, or (d) the organizational documents of Customer; and
- B. The individual signing the Contract on behalf of Customer is a duly authorized officer of the Customer with the power and authority to enter into the Contract on behalf of Customer; and
- C. The Customer shall comply with all applicable federal, state and local laws, rules and regulations in performing its obligations under this Contract.

# X. Confidentiality; Public Disclosures

In addition to the confidentiality obligations set forth in Section V, Customer hereby agrees to treat as confidential, and not disclose to third parties, absent express written consent by the Postal Service, the prices and the terms offered to under this Contract.

Each Party hereby acknowledges and agrees that the form, substance, and timing of any press release or other public disclosure of matters related to the Contract or the relationship between Customer and the Postal Service prepared and/or to be disclosed by it shall be subject to the prior review and written approval of the other Party. Each Party shall endeavor to respond to the other Party with written comments or written approval within five (5) business days of receipt of the proposed disclosure, but failure to approve in writing within that time frame shall be deemed disapproval. This Section does not prohibit either Party from disclosing information that is required to be disclosed by law or that is requested by any federal, state, or local governmental body in the proper exercise of its oversight or investigatory jurisdiction.

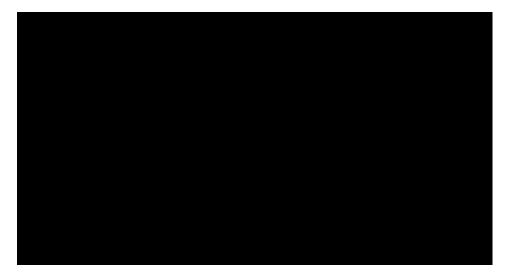
#### **XI.** Sovereign Acts

The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary set forth herein, the

Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of this Appendix, such law, regulation or policy shall control.

#### XII. Notices

Any notice or other communication to be provided to a Party hereunder shall be in writing and shall be sent via certified mail (with return receipt requested) or by email to the individual and at the address listed below unless otherwise specified by the Party in writing. Notices shall be deemed given when received by the Party.



# XIII. Governing Law

THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH PRINCIPLES OF FEDERAL LAW.

# XIV. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to	o be duly executed as of
the later date below:	

UNITED S	STAT CE	
Signed by:	Shibani Gambhir	
Printed Na	me: Shibani Gambhir	
Title: Vio	ce President Business Development	
Date:	10/26/2022	